***United States Court of Appeals***

***for the***

***District of Columbia Circuit***

# TRANSCRIPT OF RECORD

426

BRIEF FOR APPELLEE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17472

JOSEPH M. JOYNER, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

DAVID C. ACHESON,
*United States Attorney.*

FRANK Q. NEBEKER,
HAROLD H. TITUS, JR.,
ROBERT D. DEVLIN,
*Assistant United States Attorneys.*

## QUESTION PRESENTED

Where the appellant was indicted for robbery and the evidence is undisputed as to the fact of an assault, in the opinion of appellee the following question is presented:

1. May the court properly instruct the jury on assault with intent to commit robbery as an included offense of robbery?



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## TABLE OF CASES



## OTHER REFERENCES



*Cases and authorities chiefly relied upon are marked by asterisks.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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JOSEPH M. JOYNER, APPELLANT

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*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

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## BRIEF FOR APPELLEE

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### COUNTERSTATEMENT OF THE CASE

Appellant was indicted on July 31, 1962, upon an indictment charging robbery. He was arraigned and pled not guilty on August 3, 1962. On October 18, 1962, appellant was found guilty of assault with intent to commit robbery. He was sentenced on November 30, 1962, under the Federal Youth Corrections Act and confined for a period not to exceed eight (8) years. Thereafter by Order of this Court dated December 11, 1962, appellant was granted leave to appeal in forma pauperis.

The evidence at trial showed that Mr. William Stevenson, cab driver, age 64, on the evening of June 30, 1962, parked his car in the 4000 block of 8th Street, N.W. (Tr. 4). Later that same evening he left his home and went to his car (Tr. 5). He saw the appellant sitting in his car, reaching into his glove compartment (Tr. 6). "I pulled the door open. I say, 'you thief what are you doing in my car.'" Appellant "came

out swinging." Mr. Stevenson backed away but was knocked down by his assailant, "he punched me in the eyes, both of them black, bloodied my nose, hurt my neck, tried to get in this pocket where this wallet is * * * but he couldn't get it out" (Tr. 6). Then he put his hands in my sweater pockets, took about $5.00 in change and ran (Tr. 6). Mr. Stevenson, "yelled as loud as he could" for help (Tr. 6). He knew who his assailant was, since he "almost worked for me three years ago."

Mr. Paul F. Jackson, who witnessed the assault, heard Mr. Stevenson call for help (Tr. 95). He came down off the porch and saw the appellant standing over the complainant (Tr. 95). He was "pounding on him," hitting him with his fists (Tr. 97). Mr. Jackson ran after the appellant for two or three blocks (Tr. 98). Appellant dropped a dime, during the chase and both Mr. Jackson and appellant looked for it. Appellant put his arm around Jackson's shoulders and said, "Man, I just beat the hell out of a white man" (Tr. 100). Mr. Jackson told appellant, "well you had better go in the house before the police come." When Jackson returned to the scene of the crime, Mr. Stevenson was still on the ground bleeding (Tr. 101). Jackson testified that the complainant was not a white man, but a Negro. He reported what he had seen to the police (Tr. 100).

Joseph Morton Joyner, appellant, testified on his own behalf. On the day in question he drank T-Bird wine (Tr. 175). On his way home that evening, he felt a "little a sick and laid on the man's car" (Tr. 178). "My head was feeling a little bad" (Tr. 178). "A guy came up and scared me, scared the daylights off of me and I turned around without thinking and swung" (Tr. 181). "He went down and I went down on my back" (Tr. 182). "I jumped up and got on top of him first, while he was trying to get up (Tr. 182). I saw someone's foot, I didn't look at him, I got up and ran" (Tr. 184). Appellant also testified he did not take any money or had he intended to take any (Tr. 184).

The Judge informed counsel that he would instruct on robbery and also the lesser crimes "as I see it," the assault with intent to commit robbery (J.A. 4). The Court also instructed

on attempted robbery and at defense counsel's request he instructed on simple assault (J.A. 6). Defense counsel objected to the instructions on assault with intent to commit robbery (J.A. 4, 6). The Court overruled the objection. The jury returned a verdict of assault with intent to rob (Tr. 256 and 257).

## STATUTES AND RULE INVOLVED

Title 22, District of Columbia Code, Section 2901, provides:

> Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

Title 22, District of Columbia Code, Section 501, provides:

> Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not more than fifteen years.

Federal Rules of Criminal Procedure, Rule 31(c), 18 U.S.C., provides:

> *Conviction of Less Offense.* The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

## SUMMARY OF ARGUMENT

The District of Columbia robbery statute contemplates both common law robbery and robbery as expanded to include sudden or stealthy seizure or snatching. In the instant case appellant was indicted for robbery by force and violence as well as for sudden or stealthy seizure. The indictment placed

appellant on notice that he was charged with robbery by force and violence. All robbery by force and violence necessarily includes an assault. Robbery like assault is a crime against the person. In the instant case the fact of an assault is unquestioned. It is the trial court's duty to instruct the jury on the law applicable to the facts before it.

Appellant's argument that if there can ever be a robbery without an assault, then assault with intent to rob can never be an included offense of robbery defies both reason and logic. Where it is legally possible to have both offenses arise from the act charged the court will look to the evidence to determine the propriety of an included offense instruction.

## ARGUMENT

### The trial court properly instructed the jury, on assault with intent to commit robbery as an included offense of robbery

The District of Columbia robbery statute 22 D.C.C. 2901, contemplates two types of robbery, common law robbery by force and violence and also robbery as expanded to include "sudden or stealthy seizure or snatching" *Neufield* v. *United States,* 73 U.S. App. D.C. 174, 118 F. 2d 375 (1941); *United States* v. *Evans,* 28 App. D.C. 264; *Mann, et al.* v. *United States,* 119 F. Supp. 406 (1954). In the instant case appellant was indicted in the alternative and thus on notice to defend against both the common law robbery by force and violence and also robbery stemming from a sudden or stealthy seizure. Where an indictment for robbery charges alternative ingredients of the offense, proof of either alternative is permissible and does not create a variance, 46 Am. Jur. 164, *Turner* v. *United States,* 57 App. D.C. 39, 16 F. 2d 53 (1926); *Tomlinson* v. *United States,* 68 U.S. App. D.C. 106, 93 F. 2d 652 (1937). The indictment in the instant case, following the language of the statute, was sufficient to give appellant notice of the crime of which he was charged. *Dist. of Columbia* v. *Hunt,* 82 U.S. App. D.C. 159, 163 F. 2d 833 (1947); *Bennett* v. *United States,* 285 F. 2d 567 (5th Cir. 1960).

The indictment placed him on notice[1] that he was charged with robbery, by force and violence and by sudden or stealthy seizure or snatching. Common law robbery is defined as a felonious and forcible taking from the person of another goods or money of any value by violence or putting in fear. *Deal* v. *United States*, 274 U.S. 277, 283; *United States* v. *Nedley*, 256 F. 2d 350 (3rd Cir. 1958). Coke defines common law robbery as, a felony by the common law, committed by a violent assault upon the person of another by putting him in fear and taking from his person money or other goods of any value whatsoever. Coke III Inst. 69, *Burdick Law of Crimes*, Vol. 2, p. 403, 404. Historically all common law robberies necessarily include an assault. *United States* v. *Nedley, supra*, see *Wharton's Criminal Law*, Vol 2, p. 242, 243; *Burdick Law of Crimes*, Vol. 2, p. 403 and 404 and cited cases. Assault than has been an essential element of the crime of robbery. *Rutkowski* v. *United States*, 149 F. 2d 481 (6th Cir. 1945); *Costner* v. *United States*, 139 F. 2d 429 (4th Cir. 1943); *Bertsch* v. *Snook*, 36 F. 2d 155 (5th Cir. 1929). The District of Columbia robbery statute, as has been observed, includes taking by sudden or stealthy seizure or snatching. Appellant erroneously assumes, through his literal and inflexible approach, that the statutory alternative to common law robbery removes any aspect of assault from the crime. The Government does not agree. Robbery, like assault, is still a crime against the person, and so long as the taking amounts to robbery the "person" of the victim is sufficiently involved to be subject to an assault. *Spencer* v. *United States*, 73 U.S. App. D.C. 18, 19, 116 F. 2d 801 (1941), cited by appellant is not contra.

In the instant case the fact that an assault was committed is not questioned. The complainant testified to a vicious assault upon him, this was corroborated by a government witness, Jackson and finally even by appellant who testified to the fact of an assault upon the complainant. Appellant claims no prejudice in the preparation of his defense. He now presents a purely academic issue. Appellant cites *James* v. *United States*,

[1] The indictment charged that appellant by "force and violence * * * stole * * *" If there had been any doubt, appellant, could have filed a bill of particulars under Rule 7(f), Federal Rules of Criminal Procedure.

238 F. 2d 681, 683 (9th Cir.), a case in which James was charged and convicted of burglary in a dwelling house. On appeal the court reversed because the building was unoccupied. The Government argued that burglary not in a dwelling house was a lesser included offense of burglary in a dwelling house. The Court pointed out that not only was there an added element of proof, for conviction in burglary of a non-dwelling house, namely, proof that property was kept therein but more important the Court noted what the Government termed an included offense was punishable by a minimum of two years imprisonment whereas the so called greater offense was punishable by a minimum of only one year. Since James had been sentenced to a minimum of eighteen months imprisonment, the Court would be forced to increase his sentence if they were to accept the government's position. The Court stated "we are not disposed to hold that the included offense rule is meant to apply where the claimed lesser or included offense prescribes a greater minimum punishment than the so-called greater offense." However, the government agrees with the general rule of this case, as applied to the instant case it would indeed be impossible to commit the greater offense without first having committed the lesser.

Appellant points out that the Court by it's own motion and over objection instructed the jury on the included offense of assault with intent to rob. The standard for determining the propriety of an instruction on a lesser included offense applies whether or not the defendant wants the instruction. The trial court's duty is to instruct the jury on the law applicable to the facts before them. As Judge Prettyman put it in *Chaifetz* v. *United States*, 109 U.S. App. D.C. 349, 352, 288 F. 2d 133, 136 (1960),

> Instructions are the direction of the Courts as to the law in the case. They are the Court's own directions. They are to be correct as to the applicable law. Who requests a given instruction makes no difference upon the problem of propriety.

The appellant charged with robbery has no right to "waive" an instruction on an included offense if such instruction is

warranted by the evidence. Clearly such an instruction was warranted in the instant case.

Appellant's position, thus, starts from the false premise that robbery and assault can be mutually exclusive. He next argues that if they can be mutually exclusive, assault with intent to rob is never an included offense of robbery. Neither is logical. Where it is legally possible to have both offenses arise from the act charged the Court will look to the facts or evidence to determine the propriety of an included offense. See *Hansborough* v. *United States,* No. 16998, decided Sept. 27, 1962. Only in a case where it is legally impossible for one offense to be included in another (e.g., Rape and Embezzlement) could appellant's argument here advanced be palatable.

## CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID C. ACHESON,
*United States Attorney.*

FRANK Q. NEBEKER,
HAROLD H. TITUS, JR.,
ROBERT D. DEVLIN,
*Assistant United States Attorneys.*

U.S. GOVERNMENT PRINTING OFFICE: 1962

JOINT APPENDIX

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 17,472

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JOSEPH M. JOYNER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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APPFAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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# JOINT APPENDIX

[Filed July 30, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on July 3, 1962

| | |
|---|---|
| THE UNITED STATES OF AMERICA ) | Criminal No. 648-62 |
| ) | |
| v. ) | Grand Jury No. 762-62 |
| ) | |
| JOSEPH M. JOYNER ) | Violation: 22 D.C.C. 2901 (Robbery) |

The Grand Jury charges:

On or about June 30, 1962, within the District of Columbia, Joseph M. Joyner, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of William E. Stevenson, property of William E. Stevenson, of the value of about $5.00, consisting of $5.00 in money.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia.

A TRUE BILL: * * *

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[Filed August 3, 1962]

## PLEA OF DEFENDANT

On this 3rd day of August, 1962, the defendant, Joseph M. Joyner, appearing in proper person and by his attorney Paul R. Kramer, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of

Charles F. McLaughlin
Presiding Judge
Criminal Court # Assign.

* * *

* * *

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[Filed February 21, 1963]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 Washington, D. C.
Tuesday, October 16, 1962

For trial before Judge WILLIAM B. JONES and a jury at 10 a.m. today.

APPEARANCES:

For the United States:

Mr. Harold H. Titus, Jr.

For the defendant:

Mr. Paul R. Kramer

* * * * *

3 WILLIAM ERVIN STEVENSON,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TITUS:

* * * * *

Q. And I want to direct your attention, Mr. Stevenson, back to

4 June 30th, the night of June the 30th, 1962. Where were you living at that time? A. Seven twenty-one Shepherd Street.

Q. What was your occupation at that time on June the 30th, 1962? A. Cab driver.

Q. What kind of a cab were you driving, Mr. Stevenson? A. Dupont.

Q. A Dupont cab? A. That is right.

Q. How old a gentleman are you, sir? A. I am 64.

Q. You are 64 now? A. I was 64 two weeks; I was 64 June 6th.

Q. On this occasion of the date of June the 30th, 1962, where did you park your car that evening, your cab? A. I parked my cab across the street from the school, in the 4000 block of 8th Street, Northwest.

Q. Do you know the name of the school, Mr. Stevenson? A. No, sir, I do not.

Q. That is all right, sir. When you parked your cab, Mr. Stevenson, and you left it, what was the condition of the driver's door; was it

locked or unlocked? A. It can't be locked.

Q. Why not, sir? A. Well, it is dilapidated to that extent.

* * * * *

5 Q. * * * Tell the jury and the Court in your own words what happened as you approached your taxicab. A. I walked down 8th Street, and I was this close to my left front door, the driver's door, before I

6 saw the defendant sitting in my seat, waving his hand back here, and then reach in the glove compartment.

I pulled the door open. I say, "You thief, what are you doing in my car?" And he came out swinging. I backed up, defending myself the best I could, as far as from here to that gentleman back there.

Q. From where you are sitting to where this man is sitting in the courtroom? A. That is right, from the cab.

Q. What happened then? A. He got in a good one and knocked me down.

Q. What happened then? A. After he knocked me down, he punched me in the eyes, both of them black, bloodied my nose, hurt my neck, tried to get in this pocket here where this wallet is; but I had an identification card in there , too, and he couldn't get it out.

Q. What did he do then? A. He put his hands in my sweater pockets and took my change, and took off.

Q. How much change did you have in your sweater pocket? A. Oh, approximately five dollars, I guess.

Q. Did you call out, make a noise? A. I yelled as loud as I could.

Q. Now, Mr. Stevenson, before that particular night had you ever

7 seen this defendant before? A. That young man's name is on my book at home. He almost worked for me three years ago.

Q. Did you remember him at the time that you had seen him? A. I have seen him in the neighborhood from time to time.

Q. Did you go to the hospital, Mr. Stevenson? A. Yes, sir; the ambulance took me.

Q. How long did you stay there?

MR. KRAMER: I must object. I think this is irrelevant. He testified as to what happened as far as the robbery. I don't think anything else is necessary, Your Honor.

* * * * *

107 Washington, D. C.
Wednesday, October 17, 1962

* * * * *

221 THE COURT: Yes. Would you like to hear what I am proposing to charge?

MR. TITUS: Yes.

* * * * *

227 THE COURT: Of course I will read the indictment. I will instruct as to the crime of robbery, defining it from the statute and setting forth its elements. I will also instruct with the crime or lesser crimes, as I see it, the assault with intent to commit robbery.

MR. KRAMER: This I would object to because he was --

THE COURT: He was what?

MR. KRAMER: He was indicted specifically for robbery. The complaining witness came in and said that money was taken from him on the stand. My whole defense has been developed that this complaining witness has now changed his mind. The lesser included offense of assault with intent to commit robbery, I would certainly object to. He is charged with robbery. He was charged with taking five dollars and the complaining witness has testified definitely on the stand under oath the five dollars was taken from him, and I think he should be charged just with the robbery.

THE COURT: Of course the complaining witness also testified that the defendant attempted to pull from the complaining witness' pocket a billfold, or money container in any event, and was unable to do so. Now that is what this goes to in the event they do not believe beyond a reason-

228 able doubt that robbery was actually committed.

Now do you say that it is not a lesser offense than robbery? I thought maybe you were saying that too, were you?

MR. KRAMER: I'm not sure whether it is a lesser offense or not. Evidently it is not since he was originally charged with it and indicted for robbery. I am saying that the whole defense has been wrapped up under the theory that no money was actually taken and there was an assault. You would throw out that whole theory and the jury can also disregard the defendant's testimony and fall back on the robbery with intent. I think it is highly prejudicial to the defendant at this time.

THE COURT: Let me ask you this. Your objection to this proposed instruction, what I am going to instruct on, is on the basis that the indictment said robbery of five dollars and therefore no other offense should be charged. There should be no charge made with respect to any other offense even though it is a lesser offense, is that correct?

* * * * *

229 MR. KRAMER: Because he is charged with taking something, I think that his defense should stand or fall on the fact of whether or not something was taken and this is what he is charged with, and anything lesser, as an intent, is highly prejudicial to the defendant now since he was not put on notice nor given time to prepare for an attempt, only to prepare for whether or not a robbery in fact took place, and to charge the jury with assault with intent to commit robbery is, I feel, improper in this particular case, and he's charged with the robbery.

THE COURT: I think I understand. In other words, your argument is that if they cannot prove robbery he should not be charged with anything, is that it?

MR. KRAMER: Well, the jury shouldn't decide anything further than robbery at this time.

* * * * *

231 MR. DRAMER: I think they should decide whether or not a robbery took place.

THE COURT: They are also going to have a chance, if they do not believe money was actually taken, whether they believe there was an assault with intent to commit robbery. I am going to give a third charge

on attempted robbery. I am going to say this:

> "An attempt consists of an act done with the specific intent to commit a particular crime by means apparently reasonably adapted to the accomplishment of that end, which act goes beyond mere preparation and carries the project forward in dangerous proximity of the criminal end sought to be attained which nevertheless falls short of the intended crime."

Again a lesser offense.

MR. KRAMER: I would object to this on the same grounds. I would like also, since there is evidence -- I would like also if the Court would charge as to simple assault. There is definite evidence that there was a simple assault, and if the Court is willing to charge as to lesser offenses, I would like to request now that the simple assault instruction be given.

232 THE COURT: You want it?

MR. KRAMER: That is correct, Your Honor, since these other lesser offenses will come in.

* * * * *

238 Washington, D. C.
October 18, 1962

* * * * *

239 JURY CHARGE

THE COURT: (Jones, J.):

* * * * *

249 Under this indictment there are included lesser offenses. One of them is assault with intent to commit robbery. While this lesser offense does not appear in the indictment it is there by operation of law. An assault is defined by law as an unlawful attempt or effort with force and

250 violence to do injury to the person of another coupled with the present apparent ability to carry out such attempt.

Robbery is defined very simply in the District of Columbia Code. I have defined it for you. Immediate actual possession, as I have defined it for you, means the thing taken may be on the person or within reach of

the person so long as it is considered to be in such possession that if the complainant knew such property was being taken such knowledge would likely result in physical violence or struggle for possession of the property.

In order for you to find the defendant guilty of an assault with intent to commit robbery it is not necessary for you to find the defendant accomplished his purpose to rob. The only two elements which the government must prove beyond a reasonable doubt in order for you to find the defendant guilty as charged are: first, that the defendant assaulted the complainant; and two, he did so with the intent to commit robbery. As I stated, intent ordinarily cannot be proven directly because, as I have also stated, there is no way of fathoming and scrutinizing the operation of the human mind, but intent may be deduced from circumstances, from things done and from things said, and a person is assumed to intend the natural and probable consequences of his act.

251 If you should find that the government has proved both elements of the offense, that is, the assault and the intent to rob, proven it beyond a reasonable doubt, then you may find the defendant guilty of that offense. However, if you should find the government has failed to prove either or both of such elements beyond a reasonable doubt, then you cannot find the defendant guilty of assault with intent to commit robbery.

A second lesser offense, an attempt to commit robbery, an attempt consists of an act done with the specific intent to commit a particular crime by means apparently reasonably adapted to the accomplishment of that end, which act goes beyond mere preparation and carries the project forward in dangerous proximity of the criminal end sought to be attained which nevertheless falls short of the intended crime, that is, in this instance robbery.

Now again defining intent, because as you have noted, intent is a necessary element in the definitions I have given to you of robbery, assault with intent to commit robbery, and an attempted robbery. Intent is the essence of all crime. The question for you to decide is what was

the intent of the defendant with which he did this act on the date specified. In that regard take into consideration all the testimony in the case and
252 arrive at the intent he had in his mind. One human being cannot read what is in the mind of another. Only the all-seeing eye of God can do that. Words and actions before and after the alleged offense, gather from them and draw your conclusion as to his intent. Intent means that a person had a purpose to do a thing. It means that he makes an act of the will to do a thing. It means consent to the doing of it.

A third or lesser offense is assault. An assault is defined by law as an unlawful attempt or effort with force and violence to do injury to the person of another, coupled with the present apparent possibility of carrying out such an attempt.

* * * * *

254 With respect to the verdicts possible here, you have a right to return any one of five possible verdicts in this case. You may find this
255 defendant guilty as indicted, that is, guilty of robbery, or you may find the defendant guilty of assault with intent to commit robbery, or you may find the defendant guilty of attempted robbery, or you may find the defendant guilty of simple assault, or you may find the defendant not guilty of any of the offenses.

I stated before and I want to repeat again that the indictment charged only robbery, but the lesser offenses are included, but the indictment is not to be taken as evidence; it is merely the charge made to bring this matter before the Court and to inform the defendant of the charge against him in the indictment.

* * * * *

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256 VERDICT 4:10 p.m.

THE DEPUTY CLERK: In the case of The United States versus Joseph M. Joyner, will the Foreman please stand.

Mr. Foreman, has the jury agreed upon a verdict?

JURY FOREMAN: We have.

* * * * *

257 JURY FOREMAN: We find him guilty of assault with intent to rob.

THE DEPUTY CLERK: Members of the jury, your Foreman says that you find the defendant Joseph M. Joyner guilty of assault with intent to rob and that is your verdict so say you each and all?

THE JURY: Yes (in unison).

* * * * *

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[Filed November 30, 1962]

JUDGMENT AND COMMITMENT

On this 30th day of November, 1962 came the attorney for the government and the defendant appeared in person and by counsel, Paul R. Kramer, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of ASSAULT WITH INTENT TO ROB and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative pursuant to Section 5010(c), Title 18 of the U.S. Code under the provisions of the Federal Youth Corrections Act, for a period of not to exceed Eight (8) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ William B. Jones
United States District Judge.

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[Filed November 30, 1962]

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS

I, Joseph M. Joyner, being first duly sworn, depose and say that I am the defendant in the above-entitled case; that in support of my application to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the nature of my appeal is briefly stated as follows:

The Court errored in not dismissing the indictment upon motion by the defendant;

The Court errored in not granting the defendant's motion of acquittal;

The Court errored in giving a charge to lesser offenses over the objection of the defendant.

I further have truthfully set forth below information relating to my ability to pay the costs of defending the case against me:

1. Are you presently employed? No

2. How much cash do you have? Know

3. Do you own any bank account, savings account, stocks, bonds, automobile, real estate, or other valuable property? No

4. Do you have a wife, parent, or other person who may be able to assist you in paying the costs of your defense in this case? No

5. How much cash did you have at the time of your arrest? About $2.00.

6. Are you now free on bond? No . If not, do you intend to apply for bond? No .

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

/s/ Joseph M. Joyner
Joseph M. Joyner

[JURAT dated Oct. 30, 1962]

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[ Filed December 10, 1962]

Let the applicant proceed without prepayment of costs and the cost of a transcript be defrayed by the Government and with apponted counsel.

/s/ William B. Jones
District Judge

Dated: December 6, 1962